MOOK MENG SUN

v.

LOO AA KAU & ORS

HIGH COURT MALAYA, IPOH
ABDUL AZIZ MOHAMAD J
[ORIGINATING SUMMONS NO: 24-995-1990]
25 JANUARY 2002

LAND LAW: *Transfer - Fitness of instrument - Registration of instrument prohibited - Whether character of instrument affected so as to render it insufficient or void*

This was the plaintiff's application seeking a declaration that the transfer of certain land by the first and second defendants to the third defendant was void under s. 336 of the National Land Code ('NLC'). The plaintiff contended that since he had earlier obtained a prohibitory order that was still operative on the day of the transfer, the registration of the transfer was prohibited and the registrar should have rejected the instrument of transfer.

Held:

[1] Although the plaintiff was right in contending that the registration of the transfer was prohibited by virtue of s. 336(1)(a) of the NLC, the fact that the registration of the instrument was prohibited by reason of the existence of the prohibitory order could not effect the character of the instrument so as to render it an insufficient or void instrument. The prohibitory order was extraneous to the instrument and had nothing to do with the character of the instrument. (pp 145 d & 146 a-b)

[Application dismissed.]

Case(s) referred to:
United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn Bhd (No 2) [1988] 3 MLJ 352 ***(refd)***

Legislation referred to:
Interpretation Acts 1948 & 1967, ss. 36(b), 54(1)(b), 105(a), (b)
National Land Code, ss. 336(1)(a), (4), 338(1), (2), 340(1), (2)
Subordinate Courts Rules 1980, O. 3 r. 2, O. 30 r. 13(1), (5)

For the plaintiff - Chen Cheong Heng; M/s Concisom & Co
For the 3rd defendants - Chai Kai Wooi; M/s Chai & Partners

Reported by Suresh Nathan

JUDGMENT

Abdul Aziz Mohamad J:

By this originating summons, the plaintiff seeks a declaration that the transfer of a certain land in Mukim Bidor by the first and second defendants to the third defendant company is void under s. 336 of the National Land Code and a consequential order that the Land Administrator cancel all memorials of the transfer. The originating summons is resisted by the third defendants only. The first and second defendants, although served, did not appear at the hearing.

The plaintiff had obtained judgment against the first and second defendants for RM26,000, besides interest and costs. In order to execute the judgment by seizure and sale of the land, the plaintiff obtained a prohibitory order under O. 30 r. 13(1) of the Subordinate Courts Rules 1980. The prohibitory was made on 28 July 1989. It in effect prohibited the first and second defendants from effecting any dealing with the land. I should mention in passing that it also affected another land of the first and second defendants, but the other land is not concerned in this case. The prohibitory order was to lapse, as provided by s. 338(1) of the National Land Code, at the expiry of six months from 28 July 1989, the date on which it was made. It was entered on the register document of title to the land on 9 August 1989, with the effect, according to s. 336(1)(a) of the Code, of prohibiting as long as it continued in force the registration, endorsement or entry on the register document of title of any instrument of dealing executed by the first and second defendants. According to s. 336(4), where the registration of any instrument of dealing is prohibited by a prohibitory order, the registrar shall reject the instrument.

According to the third defendants' counsel, the prohibitory order lapsed on 27 January 1990. According to the plaintiff, 27 January 1990 was the last day on which the prohibitory order was in force or, in other words, that it was the last day of the period of six months. But that was a public holiday, being the first day of Chinese New Year. 28 January 1990 was a weekly holiday, being a Sunday. 29 January 1990 was a public holiday, being a substitute holiday for the second day of Chinese New Year which fell on the Sunday. So the plaintiff maintains that the last day of the period of six months was 30 January 1990 and the prohibitory order, therefore, lapsed only on 31 January 1990.

Although the third defendants' counsel submitted that the period of six months lapsed on 27 January 1990, I think he meant that that date was the last day of the period of six months because he could not have regarded

26 January 1990 as the last day of the period of six months from 28 July 1989. So I take it as common ground that the last day of the period of six months was 27 January 1990.

On 30 January 1990 there was registered on the register document of title to the land an instrument of transfer by which the first and second defendants transferred the land to the third defendant company. If the plaintiff is right that on that day the prohibitory order was still in force, then the registration of the transfer was prohibited and the registrar should have rejected the instrument of transfer. That is the ground of the plaintiff's application.

According to the plaintiff's counsel – and it was conceded by the third defendants' counsel – an application for extension of the prohibitory order was made before it lapsed on 31 January 1990 but the order of extension was obtained only after 31 January 1990. Since, however, the order of extension could not therefore have been presented for registration before the prohibitory order lapsed on 31 January 1990, as required by s. 338(2), then according to that section the extension order did not have effect. If, therefore, the plaintiff is right that the prohibitory order lapsed on 31 January 1990, then had the instrument of transfer been presented and registered just one day later than it actually was, that is on 31 January 1990 instead of on 30 January 1990, the plaintiff would have no ground to challenge the registration of the transfer.

The life of a prohibitory order is prescribed both by s. 338(1) of the National Land Code and by O. 30 r. 13(5) of the Subordinate Courts Rules 1980. Although substantially having the same effect, those two provisions are differently worded. Since the National Land Code is a principal legislation, it is the governing legislation, and one must look to the wording of s. 338(1). According to that section, a prohibitory order shall "lapse at the expiry of six months from the date on which it was made". It is a question of determining a period, which is six months, from the happening of an event, which in this case is the date of the making of the prohibitory order, 28 July 1989. The period will expire only when it has passed. The period will pass only with the passing of the last day of the period. The period lapses upon the passing of the last day, that is on the day after the last day. So the question that needs to be determined is what was the last day of the period of six months in this case. And I think that to determine that, resort must be had to the interpretation statute, not O. 3 r. 2 of the Subordinate Courts Rules 1980, to which the third defendants' counsel turned, because O. 3 r. 2 applies to the interpretation of the Rules whereas here we are concerned with the interpretation of a provision in the National

Land Code. The interpretation statute applicable to the National Land Code is the Interpretation and General Clauses Ordinance 1948, and the section is s. 36(b), now s. 105(b) of the Interpretation Acts 1948 and 1967 (Act 388), which is a revised or revising Act. It does not matter, though, if the Interpretation Acts 1948 and 1967 were resorted to because the provision then would be s. 54(1)(b), now also s. 54(1)(b) of Act 388, which is to the same effect as s. 36(b) of the 1948 Act, now s. 105(b) of Act 388.

Section 105(b), construed in the light of s. 105(a), is for determining a period of days from the happening of an event or the doing of any act or thing, and says as follows:

> If the last day of the period is a weekly holiday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day not being an excluded day.

Since in this case the last day of the period of six months, 27 January 1990, was an excluded day and the next following day that was not an excluded day was 30 January 1990, the last day of the period was 30 January 1990 and the period lapsed only on 31 January 1990. The plaintiff is therefore right that the registration of the transfer on 30 January 1990 was prohibited by s. 336(1)(a).

But to the third defendants' counsel, it does not follow that if a dealing is registered while the registration is prohibited by s. 336(1)(a) the registration may be cancelled. He submitted that the third defendants having been registered as the proprietor of the land, by virtue of s. 340(1) their title is indefeasible.

Learned counsel for the plaintiff did not attempt to argue that the need to cancel the registration of a prohibited dealing overrides the indefeasibility of title conferred by s. 340(1). What he did was to resort to s. 340(2) and to submit that the third defendants' title was not indefeasible by virtue of para. (b) thereof because the registration "was obtained ... by means of an insufficient or void instrument". He relied on *United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn Bhd (No. 2)* [1988] 3 MLJ 352 to argue that because the prohibitory order in this case prohibited the registration of the transfer and obliged the registrar to reject the instrument of transfer, the instrument was an insufficient or void instrument.

In my opinion for an instrument to be regarded as an insufficient or void instrument there must be something about the instrument itself that renders it insufficient or void. There is no evidence as to that as regards the instrument of transfer in this case. As I said, had the instrument been

presented and registered a day later, the plaintiff would have no ground to find fault with the registration. The fact that the registration of the instrument was prohibited by reason of the existence of the prohibitory order cannot, in my opinion, affect the character of the instrument so as to render it an insufficient or void instrument. The prohibitory order is extraneous to the instrument and has nothing to do with the character of the instrument.

As there is no effective answer to the argument as to indefeasibility of title and as the real aim of the plaintiff's application is to expunge the third defendants' title, I dismiss the application with costs.